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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
PEOPLE OF THE STATE OF
CALIFORNIA, et al.,

Plaintiffs,

v.

J.B. STRINGFELLOW, JR.,
et al.,

Defendants.

CIV 83-2501 MR

[proposed]

CONSENT DECREE RESOLVING
FEDERAL AND STATE CLAIMS
AGAINST RAINBOW CANYON
MANUFACTURING CORPORATION

DATE:

TIME:

COURT: HON. MANUEL REAL

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of California ("State") jointly filed the Complaint in this action on April 21, 1983, against numerous entities including Rainbow Canyon Manufacturing Corporation ("Rainbow Canyon") pursuant to, inter alia, Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended, for injunctive relief and recovery of costs incurred

1 by the United States and the State in responding to releases or threatened releases of hazardous
2 substances at the Stringfellow Superfund Site (the "Site");

3 WHEREAS, Rainbow Canyon ceased to do business in or about 1985 and the owner
4 of the company intends to dissolve the corporation and windup its affairs;

5 WHEREAS, Rainbow Canyon's assets consist of funds obtained from Settlements
6 with the Company's insurance carriers, which will total \$170,000.00 of which approximately
7 \$20,000.00 is necessary as a cash reserve for dissolution and winding up of the Company's affairs
8 (the "Reserve Fund"), and the remaining \$150,000.00 to come from a final compromise of Rainbow
9 Canyon's applicable insurance for this case;

10 WHEREAS; after payment of the agreed amount in this Decree and the winding up
11 of its affairs Rainbow Canyon will have no assets;

12 WHEREAS, the United States, the State, and Rainbow Canyon agree that entry of
13 this Consent Decree is in the public interest;

14 WHEREAS, the following first-party Defendants, through the Stringfellow Steering
15 Committee, have endorsed the terms of this Decree: The Deutsch Company, Montrose Chemical
16 Corporation of California, Rohr, Inc., Alumax, General Electric Co., McDonnell Douglas Corp.,
17 Quantum Chemical Company, NL Industries, Inc., Northrop Corp., The Boeing Company (sued as
18 Rockwell International), Rheem Manufacturing Co., Stauffer Chemical Company, Weyerhaeuser
19 Co., Quemetco, Inc., J.B. Stringfellow, Stringfellow Quarry Co., and Stringfellow Quarry, Inc., and
20 first party defendants Paul and Lucille Hubbs, having been apprised of the same through their
21 attorneys, and having made no objection;

22 NOW, THEREFORE, without adjudication of any issue of fact or law and upon
23 consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

24 **II. JURISDICTION**

25 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§
26 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over
27 Rainbow Canyon. The complaints of the United States and the State state a claim upon which relief
28 may be granted. Solely for the purposes of this Consent Decree and the underlying complaints,

1 Rainbow Canyon waives all objections and defenses that it may have to jurisdiction of the Court or
2 to venue in this District and shall not challenge the terms of this Consent Decree or this Court's
3 jurisdiction to enter and enforce this Consent Decree.

4 **III. PARTIES BOUND**

5 2. This Consent Decree is binding upon the United States, the State of California and upon
6 Rainbow Canyon and its successors and assigns. Any change in ownership or corporate or other
7 legal status, including but not limited to any transfer of assets or real or personal property, shall in
8 no way alter the status or responsibilities of Rainbow Canyon under this Consent Decree.

9 **IV. DEFINITIONS**

10 3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are
11 defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned
12 to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent
13 Decree or in any appendix attached hereto the following definitions shall apply:

14 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and
15 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

16 "Consent Decree" shall mean this Decree and any attached appendices.

17 "EPA" shall mean the United States Environmental Protection Agency and any successor
18 departments or agencies of the United States.

19 "Future Response Costs" shall mean all costs, including but not limited to direct and indirect
20 costs, that the United States and the State of California will incur subsequent to the entry of this Con-
21 sent Decree for response actions at the Site, including the cost of performing periodic reviews of the
22 remedial action as required by Section 121(c) of CERCLA.

23 "Interest," in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified
24 for interest on investments of the Hazardous Substance Superfund established pursuant to the
25 Internal Revenue Code, 26 U.S.C. §9507.

26 "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or
27 an upper case letter.

28 "Parties" shall mean the United States, the State of California and Rainbow Canyon.

1 "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect
2 costs, incurred by the United States and the State of California prior to entry of this Consent Decree
3 for response actions at the Site, and accrued interest on such costs.

4 "Plaintiffs" shall mean the United States and the State of California.

5 "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

6 "Site" shall mean the Stringfellow Hazardous Waste Superfund Site in Riverside County,
7 California, depicted generally on the map attached to the 1990 Record of Decision ("ROD") which
8 selected interim remedial actions for the site.

9 "State" shall mean the State of California.

10 "United States" shall mean the U.S. Environmental Protection Agency (EPA) and the U.S.
11 Department of Justice acting on behalf of the EPA.

12 **V. REIMBURSEMENT OF RESPONSE COSTS**

13 4. Rainbow Canyon shall, through the payment of \$150,000.00, reimburse the United States
14 and the State for their respective Past and Future Response Costs incurred in connection with the
15 Stringfellow Site. The payment shall be deposited into the Rainbow Canyon Special Account.
16 Amounts paid by Rainbow Canyon under this Consent Decree and deposited into the Rainbow
17 Canyon Special Account shall be retained and used to conduct or finance response actions at or in
18 connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund. Any
19 allocation of the proceeds of this payment between the United States and the State will be
20 accomplished through a subsequent agreement between those governmental entities.

21 5. Payment under this Consent Decree shall be made within 10 business days of the entry
22 of this Decree and shall be made directly to the United States by the delivery of a check in the
23 amount of \$150,000 issued by CHUBB/PACIFIC INDEMNITY INS. CO., made payable to
24 Rainbow Canyon and the United States of America, and properly endorsed over to the United States.
25 The check or the endorsement shall reference CERCLA Number CAT 080012826 and the U.S.A.O.
26 file number 82-22-418. This check shall be delivered in accordance with instructions provided by
27 the United States to Rainbow Canyon upon execution of the Consent Decree by the United States.
28 The check shall be accompanied by a transmittal letter containing the following identifying

1 information: United States, et al. v. J.B. Stringfellow, et al., Civil Action No. 83-2501 MR (C.D.
2 CA) Department of Justice File No. 90-11-2-24. Rainbow Canyon shall also send copies of its
3 transmittal letter and the check to: (1) Regional Counsel, Region IX, United States Environmental
4 Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105 (Attention: J. Andrew
5 Helmlinger); and (2) Chief, Environmental Enforcement Section, Department of Justice, P.O. Box
6 7611, Ben Franklin Station, Washington, D.C. 20044.

7 **VI. FAILURE TO MAKE TIMELY PAYMENTS**

8 6. In the event that any payment required by Section V is not made when due, the United
9 States or the State may declare this agreement null and void as to that party and take any action
10 allowed by law.

11 **VII. COVENANT NOT TO SUE BY PLAINTIFFS**

12 7. Covenant Not to Sue. In consideration of the payments that will be made by Rainbow
13 Canyon under the terms of the Consent Decree, and except as specifically provided in Paragraph 8
14 of this Section, the United States and the State covenant not to sue or to take administrative action
15 against Rainbow Canyon pursuant to Sections 106, 107(a) of CERCLA or any analogous provision
16 of state law relating to the Site, or with regard to any claims set forth in the most recent amended
17 complaint in the instant lawsuit. These covenants not to sue shall take effect upon the receipt by
18 both the United States and the State of the payments required by Paragraph 5. These covenants not
19 to sue are conditioned upon the negotiation of, and payment on, the check identified in Paragraph
20 5 above.

21 8. Reservation of Rights.

22 A. General. The covenant not to sue set forth in the preceding paragraph does not
23 pertain to any matters other than those expressly specified therein. The United States and the State
24 reserve, and this Consent Decree is without prejudice to, all rights against Rainbow Canyon with
25 respect to all other matters. Except as provided in the preceding paragraph, nothing contained herein
26 shall in any way limit or restrict the response and enforcement authority of the United States or the
27 State to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107
28

1 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law, against Rainbow
2 Canyon or against any other person or entity not a party to this Decree.

3 B. Specific Reservations. The covenant not to sue set forth in Paragraph 7 above
4 does not apply, inter alia, to the following:

5 (1) claims based upon failure of Rainbow Canyon to meet the requirements of this
6 Consent Decree;

7 (2) claims for damages to natural resources, as defined in Section 101(6) of
8 CERCLA, 42 U.S.C. § 9601(6);

9 (3) claims for costs incurred by any natural resources trustees;

10 (4) claims based upon criminal liability;

11 (5) claims for response costs incurred by any federal agencies other than those
12 specified within the definition of "United States" in this Consent Decree;

13 **VIII. DISMISSAL OF COUNTERCLAIMS AND**
14 **COVENANTS BY RAINBOW CANYON**

15 9. All counterclaims asserted in this action against the United States or the State are hereby
16 dismissed with prejudice.

17 10. Rainbow Canyon hereby covenants not to sue anyone and agrees not to assert any claims
18 or causes of action against the United States, the State, or any other person with respect to (a) the
19 Site or (b) this Consent Decree, including but not limited to, any direct or indirect claim for
20 reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal
21 Revenue Code, 26 U.S.C. § 9507) through CERCLA §§ 106(b)(2), 111, 112, or 113, or any other
22 provision of law, and Rainbow Canyon covenants not to sue and agrees not to assert any claim
23 against the United States or the State, including any department, agency, or instrumentality of the
24 United States or the State pursuant to CERCLA Sections 107 and 113, or any claims arising out of
25 response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute
26 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or
27 40 C.F.R. § 300.700(d).
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1 11. Rainbow Canyon covenants and agrees that it will not bring or assert any claim against
2 any signatory to this Consent Decree or any other person for contribution, indemnity, damages, or
3 any other type of recovery for monies paid pursuant to this Consent Decree or incurred in connection
4 with this action or the Site.

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6 **IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

7 12. Except as otherwise provided in Paragraph 11 above, nothing in this Consent Decree
8 shall be construed to create any right in, or grant any cause of action to, any person not a party to this
9 Consent Decree. Except as otherwise provided in Paragraphs 10 and 11 above, each of the Parties
10 expressly reserves any and all rights defenses, claims, demands, and causes of action which each
11 party may have with respect to any matter, transaction, or occurrence relating in any way to the Site
12 against any person not a party to this Consent Decree.

13 13. With regard to claims for contribution against Rainbow Canyon the Parties hereto agree
14 that, upon receipt by the United States of the payments required by Paragraph 5, Rainbow Canyon
15 is entitled to protection from contribution actions or claims as provided by CERCLA Section
16 113(f)(2), 42 U.S.C. § 9613(f)(2), except as set forth in paragraph 8 above.

17 14. Rainbow Canyon agrees that, with respect to any suit or claim for contribution brought
18 against it for matters related to this Consent Decree, it will notify in writing the United States and
19 the State within 10 days of service on it of the complaint. In addition, Rainbow Canyon shall notify
20 the United States and the State within 10 days of service or receipt of any order from a court setting
21 a case for trial for matters related to this Consent Decree.

22 15. In any subsequent administrative or judicial proceeding initiated by the United States
23 or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the
24 Site, Rainbow Canyon shall not assert, and may not maintain, any defense or claim based upon the
25 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other
26 defenses based upon any contention that the claims raised by the United States or the State in the
27 subsequent proceeding were or should have been brought in the instant case; provided, however, that
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1 nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section
2 VII (Covenants Not To Sue by Plaintiffs).

3 **X. ACCESS TO INFORMATION**

4 16. Rainbow Canyon hereby certifies, that it has not altered, mutilated, discarded, destroyed
5 or otherwise disposed of any records, documents, or other information relating to its potential
6 liability regarding the Site since notification of potential liability by the United States or the State
7 or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA
8 requests for information pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of
9 RCRA.

10 **XI. NOTICES AND SUBMISSIONS**

11 17. Whenever, under the terms of this Consent Decree, written notice is required to be given
12 or a document is required to be sent by one party to another, it shall be directed to the individuals
13 at the addresses specified below, unless those individuals or their successors give notice of a change
14 to the other Parties in writing. Written notice shall be given to persons listed below as required by
15 the Consent Decree with respect to the United States, EPA, the State, and Rainbow Canyon,
16 respectively.

17 As to the United States:

18 Joel Gross
19 Chief, Environmental Enforcement Section
20 Environment and Natural Resources Division
21 U.S. Department of Justice
22 P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: 90-11-2-24

23 As to EPA:

24 Keith Takata, Director
25 Superfund Division
Environmental Protection Agency
26 Region 9
75 Hawthorne Street
San Francisco, CA 94105

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1 As to the State:

2 Donald Robinson
3 Deputy Attorney General
4 California Department of Justice
5 California Attorney General South Office
6 Environment Section
7 300 South Spring St.
8 Los Angeles, CA 90013

6 As to Rainbow Canyon:

7 Robert E. Kelly, Jr.
8 Rainbow Canyon Manufacturing Corporation
9 550 Maryann Drive
Redondo Beach, CA 90278

10 **XII. RETENTION OF JURISDICTION**

11 18. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms
12 of this Consent Decree.

13 **XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

14 19. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for
15 public notice and comment. The United States reserves the right to withdraw or withhold its consent
16 if the comments regarding the Consent Decree disclose facts or considerations which indicate that
17 this Consent Decree is inappropriate, improper, or inadequate. Rainbow Canyon consents to the
18 entry of this Consent Decree without further notice. If any public comments prompt the United
19 States to seek to amend or modify the Consent Decree, Rainbow Canyon's prior execution of the
20 proposed Consent Decree shall be null and void and written consent by Rainbow Canyon to any such
21 amendments or modifications shall be obtained as a condition precedent to the filing of a final
22 Consent Decree.

23 20. If for any reason this Court should decline to approve this Consent Decree in the form
24 presented, this agreement is voidable at the sole discretion of any party and the terms of the
25 agreement may not be used as evidence in any litigation between the Parties.

26 **XIV. SIGNATORIES/SERVICE**

27 21. Each undersigned representative of Rainbow Canyon, the State, and the Assistant
28 Attorney General for the Environment and Natural Resources Division of the United States

1 Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions
2 of this Consent Decree and to execute and legally bind such party to this document.

3 22. Each Settling Defendant shall identify, on the attached signature page, the name and
4 address of an agent who is authorized to accept service of process by mail on behalf of that party
5 with respect to all matters arising under or relating to this Consent Decree.

6 23. This Consent Decree, and the signature pages attached thereto, may be executed in
7 counterpart.

8 SO ORDERED THIS _____ DAY OF _____, 2000.

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11 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et
2 al. v. J.B. Stringfellow, et al., Civil No. 83-2501 (JMI) (C.D.CA) relating to the Stringfellow
3 Superfund Site.

4
5 FOR THE UNITED STATES OF AMERICA

6 Date: _____

7 LOIS J. SCHIFFER
8 Assistant Attorney General
9 Environment and Natural Resources Division
10 U.S. Department of Justice
11 Washington, D.C. 20530

12 Date: _____

13 PHILLIP A. BROOKS
14 Senior Counsel
15 Environmental Enforcement Section
16 Environment and Natural Resources Division
17 U.S. Department of Justice
18 P.O. Box 7611
19 Washington, D.C. 20044

20 Date: _____

21 KEITH TAKATA, Director
22 Superfund Division
23 Region 9
24 U.S. Environmental Protection Agency
25 75 Hawthorne St.
26 San Francisco, CA

27 Date: _____

28 J. ANDREW HELMLINGER
Assistant Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne St.
San Francisco, CA

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of*
2 *America, et al. vs. J.B. Stringfellow, Jr., et al.*, civil action number 83-2501, relating to the
Stringfellow Superfund Site in Riverside County, California.

3 FOR THE STATE OF CALIFORNIA

4 Date: _____

5 _____
DONALD ROBINSON
6 Deputy Attorney General
California Department of Justice
7 California Attorney General South Office
Environment Section
8 300 South Spring St.
Los Angeles, CA 90013

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of*
2 *America, et al. vs. J.B. Stringfellow, et al.*, civil action number 83-2501, relating to the Stringfellow
Superfund Site in Riverside County, California.

3 FOR DEFENDANT RAINBOW CANYON MFG. CO.

4 Date: _____

5 ROBERT E. KELLY, Jr., Vice President and Chief Financial
6 Officer
RAINBOW CANYON MFG. CO.

7 Agent Authorized to Accept Service on Behalf of Above-signed Party:

8 Name: Robert E. Kelly, Jr.
9 Title: Vice President and Chief Financial Officer
Address: 550 Maryann Drive, Redondo Beach, CA 90278

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15 Signature page, Rainbow Canyon Consent Decree
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